

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

NEWPORT NEWS SHIPBUILDING AND
DRY DOCK COMPANY

Employer

and

Case 5-AC-49

INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS, AFL-CIO

Petitioner

and

LOCAL I-45, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, AFL-CIO

Party In Interest

DECISION AND ORDER AMENDING CERTIFICATION

On January 16, 2001, International Association of Fire Fighters, AFL-CIO, herein called IAFF, filed this petition under Section 102.61(e) of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, and Section 101.17 of the Board's Statements of Procedures.

The IAFF seeks an amendment of the certification previously issued to it in Case 5-RC-12061. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Based on my investigation and the following facts, I shall grant the IAFF's petition, and I shall amend the certification in Case 5-RC-12061.

FACTS

On November 4, 1983, former Regional Director Louis J. D'Amico issued a Certification of Representative in Case 5-RC-12061, certifying the IAFF as the Section 9 representative of the employees of Newport News Shipbuilding and Dry Dock Company, herein called the Employer, in the following appropriate bargaining unit, herein referred to as the Unit:

All fulltime and regularly scheduled parttime employees classified as Firefighters including Fire Fighters assigned to Fire Prevention Auditors and Fire Prevention Inspectors, Fire Fighters serving as acting lieutenants, and Fire Fighters qualified as emergency medical technicians at the employer's facility located at 4101 Washington Avenue, Newport News, Virginia; But excluding: All other employees and supervisors, Fire Prevention Auditors, Fire Prevention Inspectors, communications center operators, Lieutenants, Captains, Fire Marshalls (fire chiefs), Assistant Fire Marshalls (assistant Fire chiefs), and further excluding all production and maintenance employees, apprentices (production and maintenance departments), all material men, material support employees (material expeditors and material supply clerks), tool room employees, and plant and office clerical employees (drawing clerks, key machine operators, mail carriers, office clerks, reproduction clerks, senior office clerks, and senior reproduction clerks), office janitors, technical employees (MT--PT inspectors, optical detailers, radio graphic operators, ultrasonic inspectors and inspectors), food service workers, all employees in plant protection department, including guards and roundsmen, all pattern makers (and apprentices), all timekeepers, all salaried employees who are not classified as Fire Fighters, all design aids, design apprentices, technical aids, junior designers, designers, senior designers and supervisors as defined in the Act.

According to the IAFF, during the period following the issuance of the Certification of Representative for their bargaining unit, the principal agents of Local I-45 have been consistently involved in the negotiation and administration of collective-bargaining agreements pertaining to the Unit, and have consistently and exclusively administered those collective-bargaining agreements, so as to become the de facto bargaining representative of the unit employees. The IAFF argues the bargaining relationship between Local I-45 and the Employer will be effectively unchanged by the amendment proposed by the IAFF.

According to Local I-45 President David W. Fryrear, Local I-45 is an affiliate of the IAFF, and Local I-45 has been representing the fire fighters employed in the Unit. Fryrear states Local I-45 conducted a meeting on December 7, 2000, at which a quorum was present, and a secret ballot referendum was conducted on the question of whether to amend the certification to remove the IAFF, and to designate Local I-45 in its place, as the sole certified representative of the Unit. The vote yielded a unanimous result in favor of changing the certification to designate Local I-45 as the collective bargaining representative of the Unit.

According to the Employer, there are presently 24 employees in the Unit. The Employer does not object to the petition to amend the certification to reflect Local I-45 as the representative of the Unit.

The most recent collective bargaining agreement covering the Unit, herein referred to as the Agreement, is effective by its terms from November 27, 2000 through October 1, 2006. By definition, the Agreement is between the Employer and Local I-45, and the signatory parties are the Employer, the IAFF, and Local I-45. Appended to the Agreement are a number of memoranda reflecting specific understandings reached during negotiations between the Employer and the President of Local I-45 covering various terms and conditions of employment. The Agreement establishes a grievance procedure to resolve all disputes, and provides for the participation of the President of Local I-45 or his designee. Pursuant to the Agreement, the Employer conveys access privileges to the President of Local I-45 "to transact legitimate Union business pertaining to the administration of this Agreement." Numerous other provisions of the Agreement define the obligations of both the Employer and Local I-45.

ANALYSIS

The Board has traditionally examined two factors when considering whether to grant a petition to substitute a local union as the representative of a bargaining unit in place of a national or international labor organization with which the local union is affiliated. First, the Board considers whether the substitution of the local union will constitute a change in the actual bargaining representative or break the continuity of the bargaining relationship. Second, the Board looks for any evidence that the employees object to or oppose representation by the local union. Duquesne Light Company, 248 NLRB 1271 (1980); Newark Stove Co., 143 NLRB 583 (1963).

On the issue of continuity of representative, the past practice of the parties reveals that, during the period since the Certification of Representative issued, Local I-45 had assumed many of the responsibilities of representing the Unit. Thus, Local I-45 participated in negotiations that led to the current Agreement and is a party to the Agreement. The provisions of the Agreement clearly define Local I-45's role in administering its terms. The Employer has contractually sanctioned Local I-45 as the exclusive bargaining representative of the Unit. Such evidence establishes that even before the filing of this petition, Local I-45 was the de facto representative of the Unit.

No party to this proceeding has objected to granting the petition to amend the certification to certify Local I-45 as the collective-bargaining representative of the Unit. Nor has any evidence surfaced to indicate Unit employees object to or oppose the change in certification. To the contrary, employees were given an opportunity through the internal processes of Local I-45 to express their sentiments on the question, and unanimously gave their approval for the change.

All the evidence demonstrates that granting the petition will result in no change in the actual bargaining representative of the Unit, and that neither Unit employees nor any party to this matter object. Accordingly, I shall grant the petition to amend the certification previously issued in Case 5-RC-12061.

CONCLUSION

IT IS HEREBY CERTIFIED that Local I-45, International Association of Fire Fighters, AFL-CIO, pursuant to Section 9(a) of the National Labor Relations Act, as amended, is the exclusive representative of all the employees in the following bargaining unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All fulltime and regularly scheduled parttime employees classified as Firefighters including Fire Fighters assigned to Fire Prevention Auditors and Fire Prevention Inspectors, Fire Fighters serving as acting lieutenants, and Fire Fighters qualified as emergency medical technicians at the employer's facility located at 4101 Washington Avenue, Newport News, Virginia; But excluding: All other employees and supervisors, Fire Prevention Auditors, Fire Prevention Inspectors, communications center operators, Lieutenants, Captains, Fire Marshalls (fire chiefs), Assistant Fire Marshalls (assistant Fire chiefs), and further excluding all production and maintenance employees, apprentices (production and maintenance departments), all material men, material support employees (material expeditors and material supply clerks), tool room employees, and plant and office clerical employees (drawing clerks, key machine operators, mail carriers, office clerks, reproduction clerks, senior office clerks, and senior reproduction clerks), office janitors, technical employees (MT--PT inspectors, optical detailers, radio graphic operators, ultrasonic inspectors and inspectors), food service workers, all employees in plant protection department, including guards and roundsmen, all pattern makers (and apprentices), all timekeepers, all salaried employees who are not classified as Fire Fighters, all design aids, design apprentices, technical aids, junior designers, designers, senior designers and supervisors as defined in the Act.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington DC 20570-0001. The request must be received by the Board in Washington by March 2, 2001.

Dated February 16, 2001

at Baltimore, Maryland

/s/WAYNE R. GOLD
Regional Director, Region 5



385-2525-1700